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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 28 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, we are satisfied that the petitioner has established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Neuroscience from the University of Bern. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, neurological drug development, and that the proposed benefits of his work, improved techniques for drug development, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted a book chapter, five articles and several presentations. While publication and presentation of the petitioner's work demonstrates its dissemination in the field, at issue is the influence of this work once disseminated. The petitioner also submitted evidence that two of his articles have garnered moderate citation. The director analyzed the number of citations and concluded that they were not indicative of an influence in a "physical science field," where publication is commonplace.

On appeal, counsel asserts that there is no set number of citations that demonstrate eligibility. We concur. Citations can be useful evidence to corroborate claims of an alien's influence in the field. Conversely, an absence of citations can raise legitimate questions as to the extent of an alien's claimed influence. That said, citations are not the sole factor to consider and there is no set number of citations an alien must demonstrate to be eligible for the benefit sought.

[redacted] the petitioner's Ph.D. advisor at the University of Bern, discusses the petitioner's doctoral research. Specifically, [redacted] explains that certain questions about drug interactions can be answered through crystallization. [redacted] further asserts that the petitioner was the first to develop a method to crystallize membrane proteins such as the $GABA_A$ receptor. [redacted] states: "This method of drug positioning became an important research tool, which has been used in a number of research studies." [redacted] then provides three examples of studies that have utilized the petitioner's tool. All three examples are articles by researchers at the University of Bern. Nevertheless, the petitioner also submitted more independent citations, including an article by a Chinese research team reporting results consistent with those of the petitioner and a review article by researchers in Italy that devotes an entire paragraph to the petitioner's work.

More significantly, [redacted] asserts that in 2004, Roche Pharmaceuticals licensed the petitioner's technology from the University of Bern to use in their own research. In support of this assertion, the petitioner submitted a letter from [redacted], a senior scientist at the Discovery Technology [redacted] confirms that Roche Pharmaceuticals entered into a technology transfer agreement with the University of Bern and "currently a method developed by [the petitioner] is actively used for various drug-positioning projects, where crystallization is not feasible or possible."

[redacted] the petitioner's supervisor at Boston University, asserts that the petitioner's postdoctoral research involved joint research projects with DOV Pharmaceuticals and Helicon Therapeutics. [redacted] continues:

> [The petitioner] also assumed full responsibility for a cutting-edge research project focused on understanding how endogenous neurosteroids act at the NMDA receptors. In collaboration with DOV Pharmaceuticals, he also investigated the pharmacology of ocinaplon, a unique drug that induces robust anxiolysis without causing sedation or muscle relaxation. Investigation of the detailed pharmacology of ocinaplon and its metabolites led to development of new fundamental insights into the pharmacology of these compounds and novel anti-anxiety agents acting via $GAMA_A$ receptor, such as DOV51892.

The letter purportedly from [redacted] President and Chief Scientific Officer of DOV Pharmaceuticals is unsigned and, thus, has no evidentiary value. That said, the record contains articles about ocinaplon the petitioner coauthored with [redacted] confirming the petitioner's collaborations with DOV Pharmaceuticals on this drug.

[redacted] Director of the Genetic Neuropharmacology at Harvard-affiliated McLean Hospital, explains that while DOV Pharmaceuticals has halted further development of ocinaplon, the petitioner's work on the means of potentially developing this drug "contributed immensely to our understanding of [the] pharmacology of tranquilizers acting at the $GAMA_A$ receptors."

Finally, [redacted] notes that the petitioner coauthored a chapter in the *25th Edition of the Handbook of Contemporary Neuropharmacology*, which [redacted] characterizes as "a primary textbook for physicians and pharmacologists." That chapter is part of the record.

[redacted] Director of the Medical Scientist Training Program at the Albert Einstein College of Medicine, notes that researchers at the University of Wisconsin-Madison; the University of California, Los Angeles (UCLA); the University of Geneva and the University of Strasbourg have all cited the petitioner's work. The record contains these citations as well as letters from some of these authors.

[redacted], a professor at the University of Wisconsin-Madison, praises the petitioner's contributions as outstanding and confirms that she "used his findings" in her own work. [redacted], a distinguished professor at UCLA, explains: "Application of [the petitioner's] method allows researchers to collect information on how drugs bind to the receptors they target and optimize their structure." [redacted] confirms that his research group has used the petitioner's research, including in an article published in the *Proceedings of the National Academy of Sciences*.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above, which come from both those with first hand knowledge of the petitioner's work as well as independent sources, specifically identify innovations and provide specific examples of how those innovations have influenced the field. The petitioner also submitted corroborating evidence in existence prior to the preparation of the petition.

In summary, the petitioner has developed techniques that a pharmaceutical company has licensed and that the University of Bern and more independent institutions have utilized. The petitioner submitted both letters from independent researchers who have applied his work as well as evidence of moderate citation. While not determinative, we note the submission of an email from [redacted] a professor at the University of Vienna, requesting that the petitioner serve as an external reviewer for a thesis and offering to pay the petitioner's airfare from the United States and living expenses during the thesis defense. This request is certainly consistent with a finding that the petitioner has had an influence beyond the institutions where he has studied or worked. Given all of the evidence *in the aggregate*, including evidence not mentioned in this decision, we are satisfied that the petitioner has demonstrated his eligibility for the benefit sought.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, we withdraw the decision of the director denying the petition and approve the petition.

ORDER: The appeal is sustained and the petition is approved.